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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: NEW YORK Date: MAY 07

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

PUBLIC COPY

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 17, 1986, in Guyana. The application fails to contain any biographical information regarding the applicant's parents on pages 2 and 3. Page 4 contains a signature of the applicant's alleged father. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The application was received at the Bureau office on January 28, 1997. The district director denied the application on April 3, 1998, under section 321 of the Act, for failure of the applicant to establish that both parents were U.S. citizens. The district director also denied the application on April 3, 1998, under section 322 of the Act, 8 U.S.C §. 1433, for failure of the applicant to establish that at least one parent was a U.S. citizen. On January 4, 2000, the district director again denied the application under section 321 of the Act for failure of the applicant to establish that both parents were U.S. citizens.

On appeal, the applicant's mother, [redacted] submitted evidence that she became a naturalized U.S. citizen on August 26, 1999.

Section 321 of the Act was repealed on February 27, 2001. An applicant who was over the age of 18 on that date is ineligible to obtain the benefits of the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The provisions of the CCA are not retroactive. *Matter of Rodriguez-Trejedor*, 23 I&N Dec. 153 (BIA 2001). However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Section 321(a) of the Act in effect prior to being repealed, provides that a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established

[redacted]

by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record fails to contain evidence that both the applicant's parents are U.S. citizens. He is therefore not eligible under former section 321(a).

Sections 320 and 322 of the Act were amended by the CCA, and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 15 years old on February 27, 2001.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

There is no evidence in the file that the applicant is residing in the United States pursuant to a lawful admission for permanent residence. He is, therefore, also ineligible under section 320(a) of the Act.

Section 291 of the Act, 8 U.S.C §. 1361, provides that the burden of proving eligibility remains entirely with the applicant. Here, the applicant has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.